



Serving Norwood with Electric, Telephone, Cable & High Speed Internet Service

Jonathan Gerhardson

Email: jon.gerhardson@gmail.com

RE: Public Records Appeal, Norwood Municipal Light
Department, SPR24/1544

Dear Mr. Gerhardson:

Norwood Municipal Light Department (NMLD) is providing this supplemental response to your public records request pursuant to the Determination issued by the Supervisor of Public Records regarding the above-reference matter. The public records request seeks:

[1]Warrants, subpoenas, or other requests for logs of internet traffic, its metadata, or other information generated through the use of Norwood Light and Broadband as an internet service provider from any person, agency, or other source made between May 1, 2023 and May 1, 2024 (excluding any self-requesters; *i.e.* a customer requesting a copy of their own internet traffic); and

[2]All communications between Norwood Light and Broadband and the requestors of this information. The request expressly encompasses only the requests for such information and not the customer logs or data.

Please be advised that because your request expressly includes subpoenas and warrants, NMLD's obligation to identify the receipt of such subpoenas and warrants specifically under the public records is being addressed here. Some subpoenas may come with directions or court orders requiring that the recipient not disclose the existence of such subpoena or warrant. For instance, pursuant to federal law, a government entity may prohibit providers of information from disclosing the receipt of warrants seeking customer communications records. To illustrate, 18 USC § 2703(b) provides in pertinent part:

(1) A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures



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described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures and, in the case of a court-martial or other proceeding under chapter 47 of title 10 (the Uniform Code of Military Justice), issued under section 846 of that title, in accordance with regulations prescribed by the President) by a court of competent jurisdiction;

(Emphasis added). In other words, such warrants or subpoenas may include confidentiality obligations to ensure that the subscriber does not learn of an investigation.

Moreover, 18 U.S.C. § 2705 allows government entities to delay notification to the subscriber if disclosure would have an adverse result, which includes:

- (A) endangering the life or physical safety of an individual;
- (B) flight from prosecution;
- (C) destruction of or tampering with evidence;
- (D) intimidation of potential witnesses; or
- (E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

Specifically, the statute provides in pertinent part:

- (A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection; or
- (B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

The period for withholding the issuance of the subpoena may be extended. Thus, disclosure of the existence of any such subpoenas to a third party without a



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confidentiality obligation could tip off a subscriber or other person under investigation, which would defeat the very purpose of this statute.

Accordingly, to the extent that the request seeks information that would disclose the receipt of a confidential subpoena or warrant, NMLD would be prohibited by law or order from disclosing such information. As such, NMLD cannot confirm or deny whether any confidential subpoenas or warrants have been received. Similarly, NMLD cannot confirm or deny the issuance or receipt of communications relating to any confidential subpoenas or warrants.

NMLD recognizes that under the Public Records Law, the burden is on the custodian to establish the applicability of an exemption to withhold or redact records. The Determination states that it is unclear what records NMLD intends to withhold from disclosure, citing G. L. c. 66, § 10(b)(iv) (a written response must “identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based”); *see also* 950 C.M.R. 32.06(3)(c)(4). In addition, the records custodian is required to not only cite an exemption, but to specifically explain the applicability of the exemption to the requested records in order to comply with the Public Records Law, citing G.L. c. 66, § 10(b)(iv). NMLD has been directed to clarify these matters.

In accordance with the Determination, NMLD hereby clarifies that it only seeks to withhold confidential subpoenas or warrants and related correspondence to the extent any such documents have been received. Pursuant to G.L. c. 4, § 7 (cl. Twenty-sixth), NMLD is not required to disclose records that “specifically or by necessary implication [is] exempted from disclosure by statute.” It is NMLD’s position that this explanation satisfies the specificity requirement without confirming or denying the receipt of any particular confidential request. As the Determination acknowledges, the custodian only must identify the “categories of records” that it seeks to withhold. Moreover, NMLD’s position is supported by well-accepted principles of statutory construction. It is well-settled that statutes must be interpreted so as to be entirely harmonious with all laws as a whole. *See, e.g., Saccone v. State Ethics Comm.*, 95 Mass. 326, 334 (1985) *Rules of Statutory Construction and Interpretation*, published by the Supreme Court of the United States. Similarly, a strictly literal reading of a statute should not be adopted if the result will be to thwart or hamper the accomplishment of the statute’s obvious purpose, and if another construction which would avoid this undesirable result is possible. *See Watros v. Greater Lynn Mental Health & Retardation Ass’n*, 421 Mass. 106, 113 (1995). Plainly, the Legislature did not intend for the Public Records Law’s specificity requirement to preempt federal or state laws, court or



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administrative orders and directives or place the custodian in a position of violating an order. Accordingly, a response stating that only confidential subpoenas or warrants have been withheld to the extent that they exist addresses the concerns raised in the Determination and satisfies NMLD's obligation under G.L. c. 66, § 10(b)(iv).

To the extent that your request encompasses the following:

- Non-Confidential warrants, subpoenas, or other requests for logs of internet traffic, its metadata, or other information generated through the use of Norwood Light and Broadband as an internet service provider from any person, agency, or other source made between May 1, 2023 and May 1, 2024; and
- communications between Norwood Light and the requestors of this information, other than communications relating to confidential subpoenas or warrants, as discussed above,

NMLD hereby confirms that it has no documents responsive to your request.

Sincerely,

A handwritten signature in cursive script that reads "Rich O'Reilly". The signature is written in dark ink and is positioned above a horizontal line.

Richard O'Reilly

cc: Manza Arthur, Supervisor of Records, One Ashburton Place, Room 1719,
Boston, MA 02108